

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GILBERT R. RENN,)
)
 Plaintiff,)
)
v.) Civil Action No. 99-765-SLR
)
COMMISSIONER STANLEY)
TAYLOR; WARDEN RAPHAEL)
WILLIAMS; and, DEPUTY)
WARDEN GEORGE HAWTHORNE;)
)
 Defendants.)

MEMORANDUM AND ORDER

Plaintiff Gilbert R. Renn is a pro se litigant who is presently incarcerated at the Delaware Correctional Center in Smyrna, Delaware. At the time he filed this complaint, he was incarcerated at the Multi-Purpose Criminal Justice Facility ("MPCJF") in Wilmington, Delaware. His SBI number is 182318. On November 9, 1999, plaintiff filed this action pursuant to 42 U.S.C. § 1983 and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. STANDARD OF REVIEW

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331. Reviewing complaints filed pursuant to 28 U.S.C. § 1915 is a two step process. First, the Court must determine whether the plaintiff is eligible for pauper status.

The Court granted plaintiff's request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 on December 20, 1999 and ordered plaintiff to pay \$10.60 as an initial partial filing fee within thirty days or the case would be dismissed. Plaintiff paid the initial partial filing fee on January 13, 2000.

Once the pauper determination is made, the Court must then determine whether the action is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1).¹ If the Court finds the plaintiff's complaint falls under any of the exclusions listed in the statutes, then the Court must dismiss the complaint.

When reviewing complaints pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1), the Court must apply the standard of review set forth in Fed. R. Civ. P. 12(b)(6). See Neal v. Pennsylvania Board of Probation and Parole, No. 96-7923 1997 WL 338838 (E.D. Pa. June 19, 1997)(applying Rule 12(b)(6) standard as appropriate standard for dismissing claim under §

¹ These two statutes work in conjunction. Section 1915(e)(2)(B) authorizes the Court to dismiss an in forma pauperis complaint at any time, if the Court finds the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief. Section 1915A(a) requires the Court to screen prisoner complaints seeking redress from governmental entities, officers or employees before docketing, if feasible and to dismiss those complaints falling under the categories listed in § 1915A (b)(1).

1915A). Under this standard, the Court must "accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom." Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996). A Rule 12(b)(6) motion should only be granted "if it appears to a certainty that no relief could be granted under any set of facts which could be proved." D.P. Enterprises, Inc. v. Bucks County Community College, 725 F.2d 943, 944 (3d Cir. 1984).

Furthermore, the United States Supreme Court has held that § 1915(e)(2)(B)'s term "frivolous" when applied to a complaint "embraces not only the inarguable legal conclusion, but also the fanciful factual allegation." Neitzke v. Williams, 490 U.S. 319, 325 (1989).² Consequently, a claim is frivolous within the meaning of § 1915(e)(2)(B) if it "lacks an arguable basis either in law or in fact." Id. The PLRA also authorizes the Court to dismiss a claim which is on its face frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief, "without first requiring the exhaustion of administrative remedies." 42 U.S.C. § 1997e(c)(2); Nyhuis v. Reno, 204 F.3d 65, 69 n.4 (3d Cir. 2000).

² Neitzke applied § 1915(d) prior to the enactment of the Prisoner Litigation Reform Act of 1995 (PLRA). Section 1915(e)(2)(B) is the re-designation of the former § 1915(d) under the PLRA. Therefore, cases addressing the meaning of frivolousness under the prior section remain applicable. See § 804 of the PLRA, Pub.L.No. 104-134, 110 Stat. 1321 (April 26, 1996).

II. DISCUSSION

A. Complaint

Plaintiff raises two claims in his complaint. First, plaintiff alleges that he has been subjected to cruel and unusual punishment in violation of the Eighth Amendment due to the conditions of his confinement. Plaintiff claims that while he was incarcerated at the MPCJF he was forced to share a one-man cell with two other inmates. Plaintiff alleges that he had to sleep on the floor and that his bedding was dirty because there were three inmates in the cell. Plaintiff also alleges that the noise level was so high, that inmates were forced to scream to be heard. Finally, plaintiff alleges that he was only allowed one hour of exercise per week. (D.I. 2 at 3a)

Second, plaintiff alleges that there is a lack of rehabilitation programs available at the MPCJF. Although plaintiff appears to consider the lack of rehabilitation programs to be a violation of his rights under the Eighth Amendment, the Court construes this as a claim under the Due Process Clause of the Fourteenth Amendment. (D.I. 2 at 3a)

Plaintiff requests that the Court "interceed [sic] and alliviate [sic] the conditions" of his confinement as well as grant him "monetary compensation for both physical and mental suffering." (D.I. 2 at 4) Plaintiff also requests appointment of counsel and that he be returned to the MPCJF while this action

is pending. To the extent that plaintiff requests injunctive relief, his request is moot because he is no longer incarcerated at the MPCJF. Allah v. Seiverling, 229 F.3d 220, 222 n.2 (3d Cir. 2000) *citing* Weaver v. Wilcox, 650 F.2d 22, 27 n.3 (3d Cir. 1981) (stating that prisoner's transfer from the prison moots claim for injunctive and declaratory relief with respect to prison conditions but not claim for damages). Because the Court finds that plaintiff's claims are frivolous, his requests for appointment of counsel and to be returned to the MPCJF while this action is pending are also moot.

B. Analysis

1. Plaintiff's Eighth Amendment Claim

"It is undisputed that the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment." Helling v. McKinney, 509 U.S. 25, 32 (1993). However, in order to establish an Eighth Amendment violation, a plaintiff must allege that he has endured a sufficiently serious deprivation and that the defendant has acted with deliberate indifference to plaintiff's plight. Wilson v. Seiter, 501 U.S. 294, 298 (1991). Thus, in order to prove that the conditions of his confinement violate the Eighth Amendment, plaintiff must satisfy a two prong test which is both objective and subjective. Id.

To satisfy the objective prong, plaintiff must allege

that he is "incarcerated under conditions posing a substantial risk of serious harm." Farmer v. Brennan, 511 U.S. 825, 834 (1994) *citing* Helling v. McKinney, 509 U.S. at 35. Serious harm will be found only when the conditions of confinement "have a mutually enforcing effect that produces the deprivation of a single identifiable human need such as food, warmth, or exercise," and "[n]othing so amorphous as 'overall conditions' can rise to the level of [such a violation] when no specific deprivation of a single human need exists." Blizzard v. Watson, 892 F.Supp. 587, 598 (D. Del. 1995) *citing* Wilson v. Seiter, 501 U.S. at 303-304.

In this case, plaintiff has failed to allege any threat of serious harm posed by the conditions of his confinement. For instance, plaintiff does not allege that he was denied a mattress or blankets and acknowledges that he was given exercise time. While sleeping on a mattress on the floor is not ideal, the Court recognizes, as numerous other courts in this circuit have, that prison overcrowding is now an unfortunate fact of life. Jackson v. Brewington-Carr, No. 97-270, 1999 U.S. Dist. WL 27124 (D. Del. Jan 15, 1999); Randall v. City of Philadelphia, No. 86-6300, 1987 U.S. Dist. WL 14383 (E.D. Pa. July 22, 1987)(collecting cases); Huttich v. Philadelphia Prison Systems, No. 86-3714, 1986 U.S. Dist. WL 10558 (E.D. Pa. Sep. 18, 1986). As long as plaintiff is receiving adequate food, shelter and clothing, sleeping on the

floor is not a violation of the Eighth Amendment. Plaintiff's claim that the defendants violated his right to be free from cruel and unusual punishment under the Eighth Amendment has no arguable basis in law and, therefore, is frivolous. Because the Court finds this claim to be frivolous on its face, it will dismiss this claim without first requiring exhaustion of administrative remedies. 42 U.S.C. § 1997e(a).

2. Plaintiff's Fourteenth Amendment Claim

Analysis of plaintiff's due process claim begins with determining whether a constitutionally protected liberty interest exists. Sandin v. Connor, 515 U.S. 472 (1995); Hewitt v. Helms, 459 U.S. 460 (1983). "Liberty interests protected by the Fourteenth Amendment may arise from two sources -- the Due Process Clause itself and the laws of the States." Hewitt v. Helms, 459 U.S. at 466.

The Supreme Court has explained that liberty interests protected by the Due Process Clause are limited to "freedom from restraint" which imposes "atypical and significant hardship in relation to the ordinary incidents of prison life." Sandin v. Conner, 515 U.S. at 483-84. "Given that prison rehabilitation and employment are discretionary opportunities that prison officials are not required to supply, plaintiff can not argue that he has a 'legitimate entitlement' to such opportunities or that the lack of such opportunities creates 'an atypical and

significant hardship.'" Abdul-Akbar v. Department of Correction, 910 F. Supp. 986, 1003 (D. Del. 1995)(internal citations omitted).

Furthermore, this Court has repeatedly determined that the Department of Correction statutes and regulations do not provide prisoners with liberty or property interests protected by the Due Process Clause. Jackson v. Brewington-Carr, No. 97-270, 1999 U.S. Dist. LEXIS 535 (D. Del. Jan. 15, 1999) (holding that statutes and regulations governing Delaware prison system do not provide inmates with liberty interest in remaining free from administrative segregation or from a particular classification); Carrigan v. State of Delaware, 957 F. Supp. 1376 (D. Del. 1997) (holding that prisoner has no constitutionally protected interest in a particular classification). Plaintiff's claim that the defendants violated his right to due process has no arguable basis in law and, therefore, is frivolous.

NOW THEREFORE, at Wilmington this 2d day of March, 2001, IT IS HEREBY ORDERED that:

1. Plaintiff's Eighth Amendment claim regarding the conditions of his confinement is hereby dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b)(1).

2. Plaintiff's Fourteenth Amendment claim regarding his lack of access to rehabilitation programs is hereby dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. §

1915A(b)(1).

3. Plaintiff's request for injunctive relief is moot.

4. Plaintiff's requests for appointment of counsel and to be returned to the MPCJF while this action is pending are also moot.

5. The Clerk of the Court shall cause a copy of this order to be mailed to plaintiff.

UNITED STATES DISTRICT JUDGE